Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

C. Anita Robinson,
Edith M. Bradford,
Linda Mines,
Carolyn A. Dingwall,
Delphine M. Jones,

Petitioners,

v.

District of Columbia
Board of Zoning Adjustment,
Metropolitan Day School, Inc.,

Respondents,

On Petition for Writ of Certiorari
to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The issues presented by the petitioners are as follows:

I. Whether the District of Columbia Court of Appeals may impose requirements of injury in fact that it deems acceptable to grant standing in light of petitioners' allegations that their substantive and procedural due process rights afforded them by the Fourteenth and Fifth Amendment to the Constitution of the United States was denied by the Zoning Agency?

II. Whether 5 U.S.C. §702 of the Congressional Administrative Procedure Act standing provision and its District of Columbia counterpart, D.C.A.P.A., D.C. Code Section 1-1510 which obligates persons who reside within an arguable zone of interest(s) to allege, acceptable "injury in fact" in appeals of land use decisions in order to have standing is a valid exercise of Congress' power under the Enforcement Clause of the Fourteenth Amendment to the Constitution?

III. Whether the Congressional Federal Administrative Procedure Act standing provision, 5 U.S.C §702 and its District of Columbia counterpart, D.C.A.P.A., D.C. Code Section 1-1510 which limits individual Advisory Neighborhood Commissioners whose property is located within the arguable "zone of interest" from seeking judicial review of a land use decision violates such individuals Fourteenth and Fifth Amendment rights to the U.S. Constitution and whether this limiting factor is a valid exercise of Congress' power under the Enforcement Clause of the Fourteenth Amendment to the Constitution?

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PARTIES TO THE PROCEEDING

The name of the intended party to this proceeding is Ward 5A-06 Single-Member-District (SMD) Advisory Neighborhood Commissioner, Mary Baird-Currie. Individual petitioners are pursuing this matter in their own right and on behalf of the ANC Commissioner.

JURISDICTIONAL STATEMENT

The petitioners filed a Petition for Review in the District of Columbia Court of Appeals on August 10, 1999 of which Mary Baird-Currie, Ward 5A-06 Advisory Neighborhood Commissioner was listed as a petitioner. The Court denied said petition on September 30, 1999 as lacking standing and denied a Motion for Reconsideration on October 22, 1999.

The petitioners filed another Petition for Review with the District of Columbia Court of Appeals on October 15, 1999. The Court denied said petition on December 2, 1999 as petitioners lacked the "requisite injury in fact" to be granted standing to appeal.

Jurisdiction is invoked upon this Court as set forth in Article III, Section 2, Clause 2 of the Constitution of the United States of America:

> "In all other Cases before mentioned the Supreme Court shall have appellate Jurisdiction both as to the Law and Fact..."

The First Amendment:

> "Congress shall make no law...prohibiting the request of the people to petition the government for a redress of grievances."

And Fifth Amendment of the Constitution of the United States of America:

> "No person shall be ... deprived of life, liberty, or property without due process of law..."

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C.A § 1257(1).

STATEMENT OF THE CASE

On March 31, 1999. The District of Columbia Board of Zoning Adjustment (hereinafter known as the BZA) held a hearing regarding the application of the Metropolitan Day School Inc. (hereinafter known as MDS, Inc.) seeking a special exception zoning relief to operate a private school and a before and after care program, The BZA notified all persons via mail who resided within two hundred (200) feet of the proposed site, which included the petitioners and the single member Advisory Neighborhood Commissioner of the hearing date and their right to attend and be heard. Petitioners appeared and attempted to express their opposition.

On May 24, 1999, the BZA (Application, No. 16421) rendered a decision to grant the special exception to MDS, Inc. and denied a subsequent "Motion for Rehearing/Reconsideration" on September 10, 1999, by the parties in opposition.

The petitioners filed timely Petitions for Review of the BZA's decision in the District of Columbia Court of Appeals, (Nos. 99-AA-1060 and 99-AA-1340, respectively) alleging a denial of due process rights of the petitioners by the BZA in refusing to hear the most important piece of the petitioners evidence in opposition to the special exception.

REASONS FOR GRANTING THE PETITION

A. Violation of Due Process Clause by the State

Petitioners contend that the D.C. Court of Appeals violated substantive due process which embodies procedural due process. Due process emanates from the Fifth Amendment (protection from federal actions) and the Fourteenth Amendment (protection from state actions) to the United States Constitution. Due process therefore requires that legislation be fair and reasonable in content as well as application. In

broad terms, substantive due process may be defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property. The essence of substantive due process is therefore protection from arbitrary, capricious and unreasonable action. *Jeffries v. Turkey Run Consolidated School District,* 492 F. 2d. 1, 3 (C.A. Ind.)

There are two aspects of the due process clause – procedural, in which, a person is guaranteed procedural fairness and substantive which *protects inter alia a* person's property from unfair governmental interference or taking. The fundamental requisite of due process is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice, whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney,* D.C. N.Y., 387 F. Supp 1044, 1084. Aside from all else, due process means fundamental and substantial justice. *Vaughn v. State,* 3 Tenn.Crim. App. 54, 456 S.W. 2d 819, 883.

The Constitution of the United States as drafted at Philadelphia in 1787, did not contain a Bill of Rights. This fact alarmed many Americans at the time because they feared that without such a bill the new central government might by arbitrary decisions infringe upon their newly won freedoms. In December of 1787, Thomas Jefferson wrote to his friend James Madison stating that:

> "A bill of rights is what the people are entitled to against every government on earth..... and that is what no just government should refuse or rest on inference."

In 1791, the Bill of Rights was adopted and ratified by the states. This document contained ten articles and based its content on such earlier statements of rights as the Magna Carta, the English Bill of Rights, and the Virginia Declaration of Rights. Although this Bill of Rights was adopted in the United States, there were doubts among constitutional experts about the authority of the federal courts to enforce the provisions of the Bill of Rights against state laws and court decisions. To resolve this doubt, the Fourteenth Amendment was

adopted and ratified in 1868 following the Civil War and the Reconstruction period. This Amendment provided that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Thus, State and Local laws became subject to Federal judicial review. Two clauses of the Fourteenth Amendment have had a significant impact on judicial interpretations of the Bill of Rights: the due process clause and the equal protection clause.

The applicable sections of the Amendment states:

> "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *[Emphasis added]*.

These clauses have enabled the federal Government to implement guaranties against state actions in matters of freedom of speech, religion, fair trials, etc.

The vitality of the Bill of Rights in ensuring individual rights of American citizens is expressly stated in those of its predecessors, namely the Virginia Declaration of Rights drafted by James Madison, considered a brilliant student of Colonial government, and the respective Declaration of Independence by Thomas Jefferson of which the Declaration of Rights was a source. The Declaration of Independence stated the basis of government as derived from the people, explained the rights of individuals and set specific limitations on the powers of government.

The inception and design of the Bill of Rights of the Constitution makes it mandatory that federal court, in this instance, or the Supreme Court, directly review any decision by a state court of last resort or any law enacted by such court that violates any citizen's constitutional right to due process of law, where it is alleged that such a violation has occurred. State courts may not and cannot deny or obliterate citizens'

rights to due process of law inherent in the U.S. Constitution in the face of its state-imposed law.

The petitioners contend that an allegation of a denial of their due process rights to be heard in opposition on and issue before the BZA, and to the D.C. Court of Appeals to seek judicial review, not only constitutes injury in fact, but weighs greater on the scale than any other concrete or tangible injury required by the D.C. Code Section 1-1510 and should not require a delineation of such to be granted standing.

B. Constitutionality of the Congressional Federal Administrative Procedure Act Standing Provision

The petitioners state that the Congressional Federal Administrative Procedure Act standing provision (APA) and its District of Columbia Counterpart (D.C. A.P.A.) does not fully guarantee the constitutional rights of individuals.

The legislative processes of Congress are invoked by Article I section 8 of the Constitution of the United States of America. Section 8 Clause 9 states:

> "The Congress shall have power to constitute tribunals inferior to the Supreme Court."

Section 8 Clause 11 states:

> "The Congress shall have power to make rules for the government and regulation of the land."

Section 8 Clause(s) 17 and 18 states:

> "The Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall

> be for the erection of forts, magazines, arsenals and other needful buildings and Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the Government of the United States, or in any department or officer thereof."

The law enforcement duties delegated to Congress are also embodied in the Fourteenth Amendment to wit:

> "The Congress shall have power to enforce by appropriate legislation the provisions of this article." (Enforcement Clause).

It flows therefore from the language of the U.S. Constitution that Congress is empowered to enforce the non-abridgment of citizens' rights. Based on the provisions in the Constitution, Congress cannot enact legislation that would violate the Fourteenth Amendment or allow the promulgation of state laws based upon congressional legislation that abridges the privileges or immunities of the citizens of the United States, denies any person within the state's jurisdiction the equal protection of laws.

Express Constitutional restrictions on Congress is embodied in the written opinion of Supreme Court Justice Black who states:

> "The Constitution is filled with provisions that grant Congress or the states specific power to legislate in certain areas..." *Williams vs. Rhodes*, 393 U.S. 23, 29 (1968). (Opinion of the Court).

Justice Black in a different text:

> "These granted powers are always subject to the limitations that they may not be exercised in a way that violates other specific provisions of the Constitution ..." *id.*

A similar opinion was proffered by the elder Justice Harlan:

> "We think that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the Courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty or property without due process of law ." *United States v. Bitty*, 208 U.S. 393, 399-400(1908) (Opinion of the Court).

The final location of the National government (District of Columbia) had its origin in the following: The Convention was moved to provide for the creation of a site in which to locate the Capital of the Nation, completely removed from the control of any State, because of the humiliation suffered by the Continental Congress on June 21, 1783. Some eighty soldiers, unpaid and weary, marched on the Congress sitting in Philadelphia, physically threatened and verbally abused the members and caused Congress to flee the city when neither municipal nor state authorities would take action to protect the members. J. Fiske, THE CRITICAL PERIOD OF AMERICAN HISTORY 1783-1789 (Boston; 1888) 112-113; W. TINDALL, THE ORIGIN AND GOVERNMENT OF THE DISTRICT OF COLUMBIA (WASHINGTON; 1903), 31-36.
Thus, James Madison noted in the FEDERALIST, No. 43 that:

> "The indispensable necessity of complete authority at the seat of government, carries its own evidence with it... without it, not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national council an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the confederacy."

The actual site was selected by a compromise between the North and South. Northerners accepted the Southern favored site on the Potomac in return for Southern support of a Northern aspiration, the assumption

of Revolutionary War debts by the National Government. W. TINDALL, THE ORIGIN AND GOVERNMENT OF THE DISTRICT OF COLUMBIA (Washington 1903), 5-30. Maryland and Virginia both authorized the cession of territory and Congress accepted. *Maryland Laws* 1796, ch.2,p.43, *13 Laws of Virginia* 43 (Hening 1789); *Act of July 16*, 1790, 1 stat. 130. Congress divided the District into two counties, Washington and Alexandria, and provided that the local laws of the two states should continue in effect. *Act of February 27*, 1801, 2, 2 Stat. N3. Congress also established a circuit court and provided for the appointment of judicial law enforcement officials. *Act of March 3*, 1801, 1, 2, Stat. 115.

Initially, there seemed to be no recorded consideration given at the convention or in the ratifying convention to the question of governance of the citizens of the District, only predictions of the perils to the Nation of setting up the national government in such a place. 3 J. STORY COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (Boston; 1833) 1215, 1216. Killian, G. Costelle; CONSTITUTION OF THE UNITED STATES ANALYSIS AND INTERPRETATION. 1992, p. 334. Madison in the FEDERALIST, No. 43 (J. Cooke ed., 1961, 289) did state to wit that the inhabitants:

> "Will have had their voice in the election of the government which is to exercise authority over them, as a municipal legislature for all local purposes, derived from their own suffrages, will of course be allowed them..."

Although there was some dispute about the constitutional propriety of permitting local residents (District) a measure of "home rule," to use the recent term, almost from the beginning, local elections were provided for. Such a contention was cited and rebutted in 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (Boston; 1833), 1218. In 1802, the District was divided into 5 divisions, in some of which the governing officials were elected. In 1802, an elected Mayor was provided. District residents participated in some elections of those who governed them until 1874 until Congress prevented such elections in the wake of financial scandals. *Act of May*

3, 1802, 2 Stat., 195; *Act of May 15*, 1820, 3. Stat. 583. *Act of February 21*, 1871, 16 Stat. 419; *Act of June 20*, 1874, 18 Stat. 116. W. Whythe; THE UN-CIVIL WAR; WASHINGTON DURING THE RECONSTRUCTION (Washington; 1958). The limited election process was replaced with a presidential appointed commission in 1878 that lasted until 1967 whenit was replaced by an appointed Mayor Commissioner and an appointed city council. *Act of June 11*, 1878, 20 Stat. 103 and *the Reorganization Plan No. 3* of 1967, 32 Fed. Reg. 116 99, reprinted as appendix to District Columbia Code Title 1.

Congress has in recent years provided for the District of Columbia, a limited form of self-government, with the major offices being filled via the election process. Residents of the District vote for President and Vice-President and elect a non-voting delegate to Congress. *XXIII Amendment to the United States Constitution; District of Columbia Self -Government and Governmental Reorganization Act*, P.L. 93-198,87 Stat. 774; Twenty-third Amendment P.L. 91-405, 84 §48, D.C. Code 1-291. An effort to confer voting representation in the House and Senate by constitutional amendment failed ratification by the states. *H. J. Res. 554, 95th Congress.*

From the standpoint of the Constitution, it appears that Congress is neither required to provide for a locally elective government nor precluded from delegating its powers over the District to an elective local government. *Loughborough v. Wheat*, 5 amend. (18 U.S.) 317 (1820); *Heald v. District of Columbia*, 259 U.S. 114(1922); *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100(1953). The Court in *Thompson v. Lessee of Carroll*, held that the "exclusive" jurisdiction granted was meant to exclude any question of state power over the District and was not intended to require Congress to exercise all powers itself. 22 How. (63U.S.) 422 (1860) *also Stoutenburgh v. Hennick*, 129 U.S. 141(1889); *District of Columbia v. John R. Thompson Co*, 346 U.S. 109-110.

The Court held for nearly a century and a half that the District of Columbia was not a State within the meaning of the diversity Jurisdiction clause of Article III. *Hepburn v. Ellzey* 2 cr. (6 U.S.) 445(1805) (Opinion of Chief Justice Marshall).

This view was overturned in 1949 when the court upheld the constitutionality of a 1940 statute, authorizing federal courts to take jurisdiction of non-federal controversies between the residents of the District of Columbia and the citizens of a state, by a margin of 5 to 4. *National Mutual Ins. Co v. Tidewater Co.*, 337 U.S. 582 (1949).

There is no dispute that the District of Columbia is a part of the United States and therefore, its residents are entitled to all the guarantees of the United States Constitution. *Callan v. Wilson* 127 U.S. 540 (1888); *Capital Traction Co. v. Hof*, 174 U.S. (1) (1899). Legislation restrictive of liberty and property in the District must find justification in facts adequate to support like legislation by a state in the exercise of its police power. *Wright v. Davidson*, 181 U.S. 371, 384 (1901).

Congress possesses over the District of Columbia the blended powers of a local and national legislature. *Kendall v. United States ex* . Stokes, 12 Pet. (37U.S.) 524, 619 (1838); *Shoemaker v. United States*, 147 U.S. 282, 300 (1893); *O'Donoghue v. United States*, 289 U.S. 516, 518 (1833). When legislating for the District of Columbia, Congress, therefore, remains the legislature of the Union, so that it may give its enactment's nationwide operation to the extent necessary to make them locally effective. *Cohens v. Virginia, 6, Wheat* (19 U.S.) 264, 428 (1821). Killian, G. Costelle; CONSTITUTION OF THE UNITED STATES, ANALYSIS AND INTERPRETATION . 1992, p. 333, 337.

The petitioners now turn the discussion to the Congressional Judicial Review section of the Administrative Procedures Act (APA) standing provision. Congress in 5 U.S.C. §702 limits the class of persons who may seek judicial review of an agency decision to those who must be aggrieved or injured by an agency action and that the alleged injury must be to an interest arguably within the zone of interests to be protected or regulated by the statute in question. *Lower Moreland Homeowner's Ass'n v. Department of Housing and Urban Development*, D.C. Pa. 1979, 479 F. Supp. 886. Congress therefore construes its standing provisions to fall within the relevant meaning of a state statute and acknowledges that what is considered criteria for adverse effect or aggrievement varies from statute to statute.

The result of 5 U.S.C. §702 is that, persons or organizations must demonstrate personal or actual or threatened injury in fact and the nature or severity of this injury is subject to the interpretation of the state court before standing to seek judicial review, is granted.

Congress, with respect to the standing provision for persons to seek judicial review of agency decisions, has not placed enough constitutional safeguards or guarantees for persons aggrieved by a lack of fairness, justice, or abridgement of their rights at the hearing stage before governmental agencies. In other words, the Federal Administrative Procedures Act Standing Provision, in its current state offers no assurances that the due process clauses of the Fifth and Fourteenth Amendments, which are interpreted by the Court to be essentially the same, with regards to individual rights, are enforced. The Court has held that the equal protection clauses of the Fourteenth Amendment are interpolated to the Fifth.

While with respect to agency decisions, particularly land use decisions, the limiting of persons with the ability to seek judicial review, to those whose injuries are within an arguable "zone of interest" to the statute to be protected, is a comprehensible one to establish proper parties, the requirement to demonstrate within applicable statutes, concrete, acceptable, personal, tangible injury in fact as a pre-condition to establish standing to appeal such decision, is unconstitutional, because it does not guarantee one's right to legal redress of grievances.

The petitioners contend that in order to ensure the protection of individual rights inherent in the United States Constitutions' due process clauses; therefore, the only limiting factor that Congress should impose upon standing to seek judicial review of agency decisions, is the determination to put decision as to whether review will be sought in the hands of those who have a direct stake in the outcome (arguable zone of interest). *Sierra Club v. Morton*, U.S. Cal. 1992, 92 5 Ct. 1361, 405 U.S. 727, 31 L. Ed. 2d 636. Such persons should be entitled to a direct appeal to the next court or tribunal for review of the agency's decision, as is the case when appeals are taken from a trial court to the next highest court for appellate review.

All persons within the territory of the United States are entitled to the protection of 'due process of law' including corporations, aliens and citizens seeking readmission to the United States. *South Carolina v. Katzenback*, 383 U.S. 301, 323-24 (1966). Due Process is effective in the District of Columbia and in territories, which are part of the United States. *Wright v. Davidson*, 181 U.S. 371, 384(1901); *Lovato v. New Mexico*, 242 U.S. 189, 201(1916).

The District of Columbia Administrative Procedure Act (D.C.A.P.A.) found in D.C. Code Section 1-1510 regarding standing to seek judicial review is virtually identical to 5 U.S.C. §702 in its language. Thus the statute states to wit:

> "In order to seek review of an administrative agency's decision: (1) The petitioner must allege that the challenged action has caused him "injury in fact, (2) the interest sought to be protected by the petitioner must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question..."

Petitioners contend that as with the Federal Statute, requirement number two of this statute is the necessary regulation which assures standing, to those directly affected by the agency decision. Requirement number one, while it is necessary for any petitioner or plaintiff to allege aggrievement, subjects the petitioner to the interpretation of the District court, as to what it considers acceptable necessary or enough tangible injury to seek redress. It is obvious from this standpoint that the court could ignore or deny a petitioner basic Constitutional guarantees to a fair hearing at the agency level; or it could even ignore petitioners actual injury in fact to the effect that it would eliminate the petitioners right to legal redress of grievances in the higher court. This statute sets up a basis to exert a 'numbing effect' on the constitutional rights of the residents of the District of Columbia with respect to land use decisions.

Congress in its capacity to legislate over state statutes must enforce the Fourteenth Amendment to guarantee citizens rights. 5 U.S. C. §702

and its District of Columbia counterpart is not a valid exercise of Congress' enforcement power.

C. Constitutionality of the Preclusion of Individual Advisory Neighborhood Commissioners to Seek Judicial Review of Land Use Decisions

The relevant aspects in the discussion of question numbers one and two are incorporated herein.

The District of Columbia Administrative Procedure Act of which the standing requirements to seek judicial review of agency decisions is incorporated in D.C. Code Section 1-1510 states in relevant part:

> (3) there must be no clear legislative intent to withhold judicial review either from the class of persons or in the type of case involved... *Lee v. District of Columbia Bd. Of Appeals and Review*, App. D.C., 423 2d. 210 (1980); *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A. 2d 417(1983).

The previous paragraph states in relevant part that:

> "Because Congress has so restricted the class of persons who may appeal an administrative decision to the Court of Appeals, appellate jurisdiction over the subject matter on review is contingent upon petitioners' right to prosecute the appeal. Therefore, the appellate court is obligated to raise the issue of petitioners' standing *sua sponte*..."

The District of Columbia Court of Appeals in *Kopff v. District of Columbia Alcoholic Beverage Board*, held that pursuant to the D.C. Act of 1975, D.C. Law 1-58, March 26, 1976, now codified in D.C. Code 1987 supp., Section 1-1510, a specific prohibition against initiation of legal actions by Advisory Neighborhood Commissioners in the District of Columbia or in the Federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen. 413 A. 2d., 152, 1980. The Congressional Federal

Administrative Procedure Act standing provision (5U.S.C. §702) and its District of Columbia counterpart (D.C. Code Section 1-1510), based on the language of the D.C. Statute therefore may preclude the Advisory Neighborhood Commission or its Commissioners on behalf of the ANC from seeking judicial review or initiating such review in the courts but it does not preclude individual commissioners from seeking review of court decisions as citizens.

Individual Advisory Neighborhood Commissioners as tax paying citizens (real and personal) of the United States of America have therefore a right to initiate suit on behalf of their own individual interests. District of Columbia citizens who happen to be Advisory Neighborhood Commissioners have a vested personal interest in governmental agency land use decisions where their property interests are contained within arguable zones of interest to a challenged action and must be able to seek legal redress if they are aggrieved by such action. Such individuals must have the ordinary basic vested constitutional rights to life, liberty and property, and the equal protection of those rights afforded them by the United States Bill of Rights.

The District of Columbia Court of Appeals in its utilization of the District of Columbia Administrative Procedure Act (DCAPA) and the Federal Administration Procedure Act (APA) on which the former is based, to preclude persons who are elected Advisory Neighborhood Commissioners from seeking judicial review of a land use decision where such persons are seeking review on the basis of aggrievement and that their property interest are within the arguable zone of interest to a challenged action is unconstitutional, because it is a violation of the substantive due process clauses of the Fifth and Fourteenth Amendments to the Constitution.

Congress in delegating legislative authority regarding judicial review to relevant statutes, where such statutes (as D.C. Code Section 1-1510) may preclude legitimate individuals from seeking judicial review of agency decision, especially land use decisions, is not properly enforcing the Fourteenth Amendment to the United States Constitution and the equal protection clause.

It must be reiterated that, although the District of Columbia is not a state, for purposes of judicial review by Federal Courts, the Court considers the due process clause of the Fourteenth Amendment which contains the equal protection clause as applicable and equivalent to the Fifth Amendment which is applicable to the District of Columbia.

The Congressional (APA) mandate upon which D.C. Section 1-1510 is based amounts to discriminating legislation with respect to individual Advisory Neighborhood Commissioners seeking legal redress as citizens. Chief Justice Taft in *Traux v. Corrigon* observed:

> "that the due process and equal protection clauses are "associated" and that "(it may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not coterminous. (Due process) tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right to life, liberty and property which the Congress or the legislative may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law." 257 U.S. 312, 331(1921)

In *Buckley v. Valeo*, the Court held that:

> "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." 421 U.S.1, 93 (1976); *Weinburger v. Wiesenfield*, 420 U.S. 631, 638 n 2(1975).

The District of Columbia Court of Appeals not only violated the due process rights of the individual Advisory Neighborhood Commissioner (ANC) by disallowing her right to prosecute an appeal of the BZA's decision; the Court of Appeals did not protect her statutory rights to advise or represent the views of the neighborhood residents. Although the Advisory Neighborhood Commission has no standing to seek judicial review of an agency decision, area residents who are ANC Commissioners should have standing to initiate legal action and to assert the rights of the neighborhood residents, and the ANC itself. If the statutory rights of an ANC Commissioner is hindered to the extent

that such Commissioner is unable to adequately represent neighborhood views, then actual injury to the ANC Commissioner occurs. Thus, that injury is within the arguable zone of interests sought to be protected by the statute in question (D.C. Code Section 1-1510).

The petitioners contend that D.C. Code Section 1-1510 is too restrictive and poses a mutually exclusive means to bar individuals from challenging agency decisions. Such exclusion as is the case here, fosters the encroachment of government interests both public and private, upon the constitutional rights of affected persons, the very situation that urged the founding fathers to adopt and ratify the Bill of Rights Amendments to the United States Constitution.

CONCLUSION

Petitioners state that unlike other States, the residents of the District of Columbia are limited to only one appellate court, the District of Columbia Court of Appeals, in which to seek judicial review of an agency decision. Wherefore, for the reasons outlined in this petition, petitioners pray that this court grant a writ of certiorari.

Respectfully submitted,

C. Anita Robinson
Edith M. Bradford
Linda Mines
Carolyn A. Dingwall*
Delphine M. Jones
In Proper Person(s)
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DATED: February 15, 2000

District of Columbia
Court of Appeals

Filed: Sept. 8, 1999

No. 99-AA-1060

C. ANITA ROBINSON, ET. AL.,

Petitioners,

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING
ADJUSTMENT,

Respondent.

BEFORE: Terry, and Reid, Associate Judges, and *Newman, Senior Judge.

ORDER

On consideration of the petition for review wherein petitioners identify themselves as commissioner petitioners, petitioners' motion to stay , and petitioners' motion for leave to file the minutes of the July 7, 1999, hearing, and it appearing that respondent denied petitioners' motion for reconsideration on July 7, 1999, it is

ORDERED that petitioners' motion for leave to file the minutes, construed as motion to supplement the motion for stay is granted, and the Clerk shall file the minutes as a supplement to the motion for stay. It is

FURTHER ORDERED that petitioners shall, within twenty days from the date of this order, show cause why the petition should

not be dismissed for lack of jurisdiction as untimely filed. *See* D.C. App. R. 15. It is

FURTHER ORDERED that petitioners shall, within twenty days from the date of this order, show cause why the petition should not be dismissed for lack of standing. It is

FURTHER ORDERED that the motion for stay is held in abeyance pending petitioners' compliance with this order.

PER CURIAM

* Judge Newman would deny the motion for stay without prejudice.

District of Columbia
Court of Appeals

FILED: Sept. 30, 1999

No. 99-AA-1060

C. ANITA ROBINSON, ET AL.,
Petitioners

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING
ADJUSTMENT, Respondent

BEFORE: Terry and Reid, Associate Judges, and Newman, Senior Judge.

ORDER

On consideration of the petition for review, this court's September 8, 1999, order to show cause, petitioners' response thereto, petitioners' motion to change the order of names of petitioners' motion to stay, the motion of the Metropolitan Day School for leave to intervene and for extension of time to file opposition to motion to stay, the lodged opposition, petitioners' opposition to the motion of the Metropolitan Day School, and the motion of the District of Columbia for extension of time to file response to the motion for stay, it is

ORDERED that this petition for review is dismissed for lack of standing.
It is

FURTHER ORDERED that all other pending motions are denied as moot.

PER CURIAM

District of Columbia
Court of Appeals

FILED: Dec. 2, 1999

No. 99-AA-1340

C. ANITA ROBINSON, ET AL.,
Petitioners

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING
ADJUSTMENT, Respondent,

and

METROPOLITAN
DAY SCHOOL, INC., Intervenor.

BEFORE: Terry and Reid, Associate Judges, and Newman, Senior Judge.

ORDER

On consideration of the petition for review, petitioners' motion for stay, intervenor's motion to dismiss, and the opposition thereto, and it appearing that petitioners lack the requisite injury of fact, it is

ORDERED that the motion to dismiss is granted, and this petition is hereby dismissed for lack of standing. It is

FURTHER ORDERED that the motion for stay is denied as moot.

PER CURIAM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16421 of Howard University/Metropolitan Day School, Inc.; pursuant to 11 DCMR 3108.1 for special exceptions under Sections 205 and 206 to renovate an existing structure and to establish and operate a private school for 220 students and 24 staff, a child development center for 20 children and 2 staff, and a before and after-care school program located in an R-2 District at premises 1240 Randolph Street, N.E. (Square 3923, Lot 25).

HEARING DATES: January 20, 1999; March 3 and 31, 1999
DECISION DATE: April 21, 1999

ORDER

PRELIMINARY MATTERS:

1. On January 20, 1999, the Board of Zoning Adjustment ("the Board") postponed/continued the public hearing in this application at the request of the Advisory Neighborhood Commission (ANC) 5A and with the agreement of the Applicant. The Board postponed/continued the hearing until March 31,1999, and set the case as the last item on its afternoon public hearing agenda.

On March 3, 1999, the Board of Zoning Adjustment again continued the public hearing in this application at the request of the Advisory Neighborhood Commission 5A, based on the ANC's representation that its traffic consultant was unable to appear. The continuance was granted over the initial objection of the Applicant. The Board determined that the hearing would occur on March 31, 1999 at 9:30 a. m. and that a decision in the case would be rendered on April 21, 1999, at a Special Public Meeting scheduled for 9:00

a.m. Additionally, the Board determined that the only parties to the application are the Applicant, ANC-5A and Concerned Citizens About the Metropolitan Day School.

2. On March 31, 1999, as a preliminary matter, the Board allowed the Applicant's representative to read a statement into the record regarding the appropriateness of her appearance before the Board as the Representative of the Applicant.

3. On March 31, 1999, the Board also determined that a Motion to Dismiss the Application, filed by Concerned Residents Association-Ward 5 was not properly before the Board because the movant is not a party to the application, and therefore, does not have standing to file the motion.

4. On April 21, 1999, the Board denied the motion of Citizens Concerned About Metropolitan Day School to strike the letter from Mr. Gerald Henning, or to reopen the proceeding to permit cross examination of Mr. Henning. The Board noted that it provided all parties an opportunity to adequately respond to all post hearing submissions.

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is identified as Lot 25 in Square 3923. It is located on the northwest corner of Randolph and 13th Streets N.E. The premise address is 1240 Randolph Street N.E. The subject site is zoned R-2 and is located in the Brookland neighborhood of Ward 5.

2. The site contains 29, 891 square feet of land area, with a frontage of 142 feet along 13th Street to the east and 210.5 feet along Randolph Street to the south. The property abuts a 16-foot wide public alley to the north.

3. The site is developed with a vacant, three-story, plus lower level, masonry institutional building, containing 27, 787 square feet of gross floor area. The site is the former location of the Howard University School of Religion. The Metropolitan Baptist Church, on behalf of the Metropolitan Day School, Inc. is the lessee of the property.

4. The subject site is located in an R-2 District which permits matter-of-right development of single-family detached and semi-detached dwellings with a minimum lot area of 3,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. A private school and a child development center are allowed in an R-2 District with special exception approval by the Board of Zoning Adjustment.

5. The site is bounded on the north by single-family detached dwellings; on the west by single-family detached and semi-detached dwellings; on the south, across Randolph Street, by single-family detached and semi-detached dwellings; and the east, across 13th Street, by single-family semi-detached and row dwellings (three-unit cluster dwellings). The Turkey Thicket Recreation facility is located less than two blocks to the southwest of the site.

6. The Applicant is requesting special exception approval to establish the Metropolitan Day School, a private school and child development center with before and after care, at the site. A private school is permitted in an R-2 District with Board of Zoning Adjustment approval pursuant 11 DCMR 206. A child development center and before and after care program are permitted in an R-2 District with Board of Zoning Adjustment approval pursuant to 11 DCMR 205.

7. The Metropolitan Day School officially opened in September 1998 with 29 students in pre-kindergarten through third grade. The Day School currently operates at the Monument Building of the Metropolitan Baptist Church at 1225 R Street, N.W. The proposed use of 1240 Randolph Street, N.E. for the

Metropolitan Day School represents the continuation of the educational use of the subject site which existed when Howard University used the site as its School of Religion.

8. The Rev. Dr. H. Beecher Hicks, Jr., Chairperson of the Governors of the Metropolitan Day School, testified that Metropolitan Baptist Church has always had an active interest in the education of children and that in 1977 and prior, the church sponsored pre-school care for children at a day care facility called Kiddie Kollege. The facility was inadequate for the need and the church closed Kiddie Kollege in 1978. Since that time, Metropolitan Baptist Church has held a continuous vision to restore quality elementary education as part of a significant outreach to the Washington community.

Dr. Hicks testified further that the Metropolitan Day School is a co-educational institution that will eventually enroll students in grades pre-kindergarten through the eighth. The purpose of the Day School is to teach and model a Christian life that clearly distinguishes between right and wrong, reflecting moral values. It teaches children to appreciate their cultural heritage and to respect persons from ethnic and cultural backgrounds different from their own. The Day School program demands excellence and is preparing children to succeed in a global society.

9. The Applicant provided expert testimony and evidence related to the requirements of 11 DCMR 205 and 206. Members of the project team were recognized by the Board as experts as follows: Mrs. W. Irene Woodard, the principal of the Metropolitan Day School, was recognized in the area of school operations and administration; Mr. Outram Hussey, the project architect, was recognized in the areas of architecture and design; Mr. Bruce Mitchell was recognized in the area of construction management; Mr. Osborne George was recognized in the area of traffic and transportation; and Ms. Madeline Petty was recognized in the area of community relations.

10. Mrs. W. Irene Woodard provided testimony on the day-to-day operation and management of the Metropolitan Day School. She testified that registration at the Day School is open to all students in the Washington metropolitan area. She testified that the educational philosophy of the Day School is shaped by five core principles: It is Christ-centered, it is Afro-centric, it emphasizes academic excellence, it develops the whole child and it requires family and community involvement.

The enrollment for September 1999 will include up to 150 students in grades pre-kindergarten through sixth, that approximately one grade will be added each school year thereafter until the maximum enrollment of 240 students in grades pre-kindergarten through eighth is attained. The pre-kindergarten students will be taught in an environment that meets the standards and regulations for child development programs in the District of Columbia. The application for a license to operate a child development center has been submitted.

Staffing. At maximum enrollment, the Day School staff will total 25
As follows:

Principal	1
Classroom Teachers	10
Classroom assistants	3
Librarian	1
Counselor	1
Part time special Subject teachers	5
Full time administrative staff person	1
Part time administrative staff person	1
Part time extended day Program assistants	2

Operating Hours. The operating hours of the Metropolitan Day School will be from 7:00 a.m. to 6:00 p.m., including the before and after care program. School hours are 8:30 a.m. to 3:00 p.m. The Before Care program will operate from 7:00 a.m. to 8:30 a.m. and the After Care program will operate from 3:00 p.m. to 6:00 p.m.

Student Drop-off and Pick-up. In accordance with the recommendations of the traffic consultant and the Department of Public Works, the Day School will request signage to extend the restricted parking in front of the school on Randolph Street so that parents can pull directly to the curb to dropoff and pickup students. Younger students will be greeted at the curb by staff members and escorted into the building. Two to three off-street parking spaces on the Randolph Street parking area can be reserved during the a.m. and p.m. peak periods for the school so that younger children and those needing special care can be picked up and dropped off on-site. Staff will be available to assist students being dropped off in the parking lot area as necessary, this provides a short-term parking area for parents who have to accompany their children into the school building. All pick-up and drop-off policies will be provided to all parents and care givers in writing and explained at the beginning of each school year, and at any time a new student is enrolled. The drop-off and pick-up area will be strictly monitored and the plan will be enforced.

Scheduled Recess. Mrs. Woodard testified that the outdoor play area will be used by the students on a scheduled basis, and that at no time will more than 40 students (two classes) occupy the play area for recess at any one time. She further testified that during inclement weather, physical activities will take place in the multi-purpose room. She also testified that Turkey Thicket, a nearby public recreation facility, is available for additional physical activity and that students will be escorted by staff to the recreation center which is one and one half blocks away. Staff will ensure that students cross at intersections that have traffic signals.

Food Service. Metropolitan Day School will provide a lunch program for the students and will provide snacks as appropriate for all programs of the Day School. Lunches and snacks will initially be catered and will be delivered to the school daily. Delivery trucks will use the alley access from 13th Street for deliveries to the rear of the building.

Noise Levels. Metropolitan Day School will maintain an effective, orderly learning environment. The noise level in the school will be appropriate for an academic environment and will be contained within the building by the masonry construction of the building. Children are required to use quiet indoor voices while in the building. The noise level in the play area will be appropriate for the age levels of the students and the activities in which they are engaged. Students will be supervised at all times. The play area is closed-in on three sides, by at least one-level of the building, with a low masonry wall on the east side of the play area. The masonry wall is proposed to be increased to seven feet with wrought iron gating to fully enclose the play area. The Applicant also provided information on acoustical panels for the seven-foot wall that would further reduce play area noise. An acoustical expert has determined that the noise generated by traffic is more than that generated by 40 children in the play area, and that the noise reduction of the barrier will ensure that playground noise levels will not have an adverse impact on the surrounding community.

Meeting and Special Events. The special events and meetings during the year include parent orientation, Back-to School night, five parent/teacher conferences, and three student performances for a total of approximately ten activities. Parking for such activities will be at the Howard University School of Divinity parking lot with shuttle service to the Day School. The record of the case contains a letter of authorization from Howard University for use of the lot.

11. The architectural plans were prepared by Mr. Outram Hussey and are contained in the record of the case as Exhibit No. 5. The exterior of the building will be slightly altered by the addition of

an elevator to allow the accessibility to all floors and to comply with the Americans with Disabilities' Act. The exterior materials of the shaft will be brick and match the existing building materials. Additionally, an enclosure over the existing interior court will provide the additional space for the library. The other changes to the building will include the reconfiguration of the interior space to allow for three classrooms on each floor for a total of 12 classrooms, teachers' lounge, library, mult-purpose room, kitchen, dining area/cafeteria, administrations' areas and toilets.

Five parking spaces will be added to bring the total to 19 on the site, which represents two spaces in excess of the zoning requirements. Landscaping will include supplemental planting of shrubs and other seasonal ground cover. Metropolitan has already planted new ground cover along the front of the building. There are two fairly mature holly trees at the edge of the property along the 13th street side that will be retained if possible.

The Day School, as proposed, is capable of meeting all applicable code and licensing requirements. The child development center licensing application for 1240 Randolph Street is pending before the D.C. Department of Health. This Board's approval is required before the license can be issued. The Day School filed for a building permit and was denied because of the need to seek special exception approval from this Board. Other requirements will be addressed and complied with during the licensing and permitting processes.

There are no other child development centers within Square 3923. There is one child development center within 1,000 feet of 1240 Randolph Street, N.E. will not have an adverse impact on the neighborhood. The center at 3809 12th Street is in the center of an active commercial zone (C-1) and the noise, traffic, operations and other factors from that center are contained within the commercial area and do not additionally impact the residential area around the Day School. Therefore, the cumulative impact of the two sites are not adverse to the neighborhood. The 3809 12th Street site is defined

by its commercial neighbors and not by the residential area around the Day School.

12. Mr. Bruce Mitchell testified that the trash dumpster will be located at the rear of the building and that trash collection will occur twice a week at the rear of the building. All deliveries of supplies will be made to the rear of the building where there is direct access to the kitchen and the lower level.

Construction will begin as soon as all approvals and permits have been obtained. Construction hours for the project will be 7:00 a.m. to 4:00 p.m. The construction hours may need to be extended from time-to-time to meet the construction schedule. Typical, those hours are extended no more than two additional hours. Therefore, extended hours would be from 7:00 a.m. to 6:00 p.m. In those cases, the community will be notified. Construction workers will be directed to use the on-site parking spaces. Construction related deliveries will occur at the rear of the building with the exception of specific materials or components that need to be delivered through the front of the building. The construction will take between five and six months.

13. The Applicant's traffic and transportation consultant, Mr. Osborne George, prepared a comprehensive traffic and transportation report that is part of the record of this case. Mr. George testified that the proposed use of the site as the Metropolitan Day School will not create traffic and parking conditions that are objectionable to the community residents and users of the adjacent properties. The study area used for the traffic study was developed in conjunction with the Department of Public Works (DPW). The site is favorably located because it is located within a couple of blocks of a major arterial roadway. The site is convenient relative to the route of the daily commute to work. Both 12th and 13th Streets are collector streets, the only portion of the road network which is part of the local street system is the section immediately adjacent to the site, that is the 1200 block of Randolph Street.

Mr. George testified that currently all intersections within the study area operate at acceptable levels of service using DPW standards. Traffic projections for the site were as conservative as possible. Because the site is adjacent to a major artery, a significant percentage of trips are already on the road for the commute to work. The traffic study did not adjust for the commuters already on the road or the typical absentee rate of similar schools. The traffic study used 1.4 children per vehicle and the 1.7 that DPW advised. The peak hour generation of vehicles to the site in the morning will be approximately 140 entering and leaving the immediate area of the site. Traffic in the evenings will be gradual because of the after care program which extends to 6:00 p.m.

Traffic along the 1200 block of Randolph Street is very light, traffic counts showed less than 50 cars during peak hour in both directions. Faded signs dating back to Howard's use of the site show no parking 8:00 a.m. to 4:00 p.m. in front of the site on the north side of Randolph. With DPW's approval, the parking can be restricted along the front of the site, from 13th Street can dropoff and pickup students. If additional space is needed, the parking lane along 13th Street can potentially be used for drop-off and pick-up. There is an entrance to the building from 13th Street. The parking areas within the site can be restricted or reserved for use by parents dropping off younger children. The approximate time required to drop a child off with supervised assistance is 10 to 15 seconds. Given eight spaces on Randolph Street for drop off and assuming up to 30 second drop off time, close to 100 percent of the time there will be a space available to accommodate a vehicle wishing to park.

Mr. George showed pictures of the 1200 block of Randolph Street and 13th Street adjacent to the site taken on March 25, 1999, at about 8:00 a.m. and the roadways were virtually empty of traffic. About eight to ten cars were parked along Randolph Street and no cars were parked along 13th Street, N.W.

Mr. George presented several other pictures of similar-sized roadways adjacent to other private schools in the city, indicating similar-sized roadways servicing larger facilities efficiently.

Mr. George testified that the proposed use of the site as compared to the previous use by Howard University will not have the parking concerns that the community complained of related to students parking throughout the community and will not have residents on-site who have vehicles to park. Day School students will be dropped off and picked up. Arrangements are in place to utilize the Howard University School of Divinity parking lot for special events and meetings. Parking in the community will not be adversely affected.

With the proposed use as Metropolitan Day School on the site, all intersections except one will operate at acceptable levels. The intersection at 13th and Taylor Streets is projected to operate marginally below the city standard by the year 2003, with or without the Day School present. Minor changes to the timing of the signal will produce an acceptable level of service at that intersection.

14. Ms. Madeline Carol Petty, Chairperson of the Community Relations Committee of the Metropolitan Day School, was unable to appear before the Board and her testimony was presented by Dr. Freddie Vaughns, a member of the committee and trustee of the Metropolitan Baptist Church. Dr. Vaughns presented testimony that the Board of Governors of Metropolitan Day School sought to establish a dialogue with the community through the single member district representative of ANC-5A 06, as early as April 1998, to discuss the school's plans for the Randolph Street property and to address the community's concerns. At the beginning of the process, the Metropolitan Day School Board believed the Day School could be developed on the site under the existing zoning exceptions granted to Howard University. The Metropolitan Day School Board still reached out to the community and participated in three single member district meetings. Ms. Mary Currie, the single member district representative for Advisory Neighborhood Commission 5A

06, was asked by the Metropolitan Day School Board to establish a committee to work with the Day School Board through the community concerns. Although a committee was established, Metropolitan Day School was never permitted to join, even after many requests. (By the time it was learned on September 1, 1998, of the need to seek a special exception, the Day School Board had presented at the joint meeting of the Brookland Civic Association and the single member district ANC 5A 06 on May 12, 1998; held open house on June 6th, discussed plans at the July 8th single member district ANC 5A 06 meeting and shared information at the August 6th single member district ANC 4A06 meeting. Metropolitan Day School continued to ask for the appointment of a committee with no response. On December 23, 1998, the Day School hand delivered copies of the history and description of the Metropolitan Day School and a draft preliminary traffic and transportation report to each ANC 5A commissioner and requested space on its January 27, 1999 agenda to make a formal presentation.

On February 5, 1999, the Metropolitan Day School mailed to more than 1,000 households in single member district ANC 5A 06, a letter which provided a status report, a chronology of community outreach efforts and frequently asked questions about the Metropolitan Day School proposal. The Metropolitan Day School has not been successful in establishing a dialogue with the community, but consistent with past BZA experience and what represents the best interests of the school and its neighbors, the school wishes to establish a community liaison committee that meets quarterly to monitor the school and community relationship.

The students will also be involved in landscaping and other community enhancement and improvement programs.

15. The record of the case contains a number of petitions and letters in support of the Metropolitan Day School proposal, including a petition done within a two-block radius of the site showing support of the project.

16. Eight persons in support of the application testified during the hearing, including one neighbor, Ms. Virgie Jones, who, with her husband and her 92 –year old mother, live adjacent to the proposed site across the alley at the rear of the site.

17. The Office of Zoning referred this application to the following District government agencies for review and comment:

a. Office of Planning
b. Department of Public Works
c. Department of Health/Services Facility Regulation Administration

18. The Office of Planning did not submit a report in this application.

19. The Department of Public Works submitted a report to the Board in support of the application. The DPW report indicated that from a transportation point of view, the proposed use can be accommodated by the existing transportation system in the area, that the drop-off and pick-up plan is adequate with the proper restrictive signage at the front of the site. Therefore, DPW has no objection to the proposal.

20. Advisory Neighborhood Commission 5A submitted two reports in this case, dated January 7, 1999 and March 1, 1999 in opposition to the proposed Day School. In testimony presented at the hearing and in its written reports the ANC expressed the following as reasons for its opposition:

a. The large number of students proposed for the site
b. The impact of construction activities on the community
c. The impact of deliveries to the school on the neighboring properties.
d. Trash, loitering, litter and noise
e. Inadequate parking

f. Unsafe traffic conditions for students, staff and visitors, including drop-off and pick-up of students
g. Increased traffic in the community and on the subject block with cars
h. Adequate security and lighting
i. Supervision of students
j. Monitoring and enforcement of all BZA conditions
k. Provision of notice if the building is sold

21. Concerned Citizens About the Metropolitan Day School (Concerned Citizens) presented testimony as a party in opposition to the Day School. Concerned Citizens presented a panel of witnesses made up on one expert witness in the area of traffic operations, transportation planning and traffic engineering and 13 lay witnesses. The issues raised by Concerned Citizens are the same raised by the ANC 5A with the addition of testimony that there are three child development centers within 1,000 feet of the site, and that there are enough schools in the area.

22. As required by the Board, the Applicant's post hearing submission was timely filed and contained an acoustical plan for noise abatement from the outdoor play area, a screening plan for the dumpster, a determination of the number of parking spaces at the Howard University School of Divinity, and a map showing that only one child development center is within the 1,000-foot radius of the subject site. The parties in opposition to the application filed timely responses to the Applicant's submission. The parties in opposition state that the Applicant's acoustical plan was inadequate and that there are three child development centers within 1,000 feet of the site. The Office of Zoning's technical staff, using the Baist's Map and an engineering scale, determined that the Applicant's representations regarding the 1,000-foot radius of the site and the included child development centers are correct.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The increase in traffic, due to the facility, will likely be minimal because most parents will drop children off on their way to work.

2. The key intersections within the area of the subject site will remain at acceptable levels of service when the Day School has obtained full enrollment in the Year 2003, except that the intersection at 13th and Taylor Streets will operate marginally below city standard, with or without the Day School at 1240 Randolph Street N.E.

3. The staff assistants will be trained to receive and deliver children during drop-off and pick-up periods.

4. Pick-up and drop-off of students will occur in a safe manner at the front of the site on Randolph Street and on-site in the parking area on the west side of the site.

5. The Applicant will provide 19 on-site parking spaces for teachers, staff and visitors.

6. Special event parking will occur on the Howard University School of Divinity parking lot and shuttle service will be provided to the attendees.

7. The outdoor play area is adequate for the number of students proposed.

8. The site, as presented on the plans, is adequate for the number of students proposed.

9. The interior noise at the site will be contained within the building because of the masonry construction. The addition of the wrought iron fencing and the dense planting in front of the wall will eliminate any adverse impact of noise from the play area.

10. There is no other child development center in Square 3923.

11. There is one child development center within 1,000 feet of the site, located in the C-1 zone. The impacts of that site are disbursed into the commercial area, and cumulative impact of the sites are not adverse to the neighborhood.

12. The Applicant will meet all code and licensing requirements applicable to the proposed uses.

13. The Applicant will not control sale of the site.

14. Students will be supervised at all times.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the Applicant is seeking special exception relief to establish a private school, a child development center and a before and after care program in an R-2 District. The granting of the relief requested requires a showing through substantial evidence that the relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations, and that it will not adversely affect the use of neighboring property. The Applicant must also meet the requirements of 11 DCMR 205 and 206 regulating child development centers and private schools.

The Board concludes that the Applicant has met the burden of proof. The Board concludes that the child development center and the before and after care program are capable of meeting all applicable code and licensing requirements. The Board is of the opinion that with the installation of restrictive signage along the front of the site and the use of trained staff to assist during the drop-off and pick-up of children, the location and design of the Day School will not create objectionable traffic conditions or unsafe conditions for picking up or dropping off children.

The Board concludes that the 19 parking spaces provided at the site will be sufficient to meet the reasonable needs of teachers, other employees, and visitors.

The Board concludes that the cumulative effect of the one child development center within 1,000 feet of the site and the proposed Day School will not have an adverse impact on the neighborhood due to traffic, noise, operations or other similar factors because the location of the center on 12th Street is in the center of an active commercial zone and the impacts will not carry over into the residential community within which the Day School will be located.

The Board concludes that the off-site recreation center in the area that will occasionally be used by the Day School is located so as not to result in endangerment to the students traveling by foot to the site and supervised by staff.

The Board concludes that the Applicant has met the highest standard of proof in this matter by providing expert testimony and evidence related to the Day School as a whole and not just the private school component, the before and after care component or the child development center component. The Applicant has met the standards of 11 DCMR Sections 205 and 206 for the entire Day School.

The Board is of the opinion that the application is in harmony with general purpose and intent of the Zoning Regulations and that the use will not tend to adversely affect the use of the neighboring property.

The Board is of the opinion that the Metropolitan Day School should be phased onto the site. Based on the Applicant's testimony of its intent to enroll up to 150 students during the first academic year, the phasing should begin at an enrollment of 150 students for a two-year period. In two years, the Applicant may return to the Board to request to be increased up to a maximum of 240 students. Should the Applicant not choose to request the increase, the

enrollment at 150 shall remain valid. The Board concludes that the request for an increase in the enrollment after the two-year period is not a new application and the Applicant need only present testimony and evidence related to traffic, parking and noise.

The Board concludes that it has accorded ANC 5A the "great weight" to which it is entitled. In light of the foregoing, the Board ORDERS that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

The number of students shall not exceed 150. In two years, the Applicant may request an increase in the number of students up to a maximum of 240 by providing sufficient evidence that the traffic, parking and noise associated with the school will not affect adversely the use of surrounding and neighboring properties. The number of staff shall not exceed 26.

The hours of operation shall be between 7:00 a.m. and 6:00 p.m., Monday through Friday.

The applicant shall provide 19 on-site parking spaces.

Outdoor play time shall be staggered so that no more than 40 children will be in the play area at one time.

Drop-off and pick-up of children shall occur in front of the building on Randolph Street and in the parking area on the west side of the site. Staff shall be available at the curb of Randolph Street and at the parking area to receive and deliver small children.

Deliveries to the site shall be made to the rear of the building between 8:00 a.m. and 6:00 p.m., except that the U.S. Postal Service and similar service shall be made through the front of the building.

Trash removal shall occur at least twice per week from the rear of the site.

The Applicant shall insure that construction on the site related to the renovation of the building shall occur between the hours 7:00 a.m. to 6:00 p.m.

The Applicant shall work with the Department of Public Works to have restrictive parking signs placed in front of the building on the north side of Randolph Street.

The renovation to the building shall be in accordance with plans marked as Exhibit No. 5 of the record.

The Applicant shall install wrought iron fencing on top of the existing masonry wall. The wall and fencing combined shall be seven feet in height. The applicant shall install matching seven-foot high wrought iron gates on each side of the wall and fenced area. The Applicant shall plant arbor vitae in the area between the wall and the sidewalk. The plantings shall be eight feet high and four feet on center.

The Applicant shall maintain all landscaping on the site in a neat and healthy growing condition and shall keep the property free of refuse and debris at all times. The outdoor trash storage container shall be located at a sufficient distance from the alley so that the swinging doors do not open onto the alley right-of-way and shall be screened as described in Exhibit No. 90 of the record.

The Applicant shall establish and maintain a community liaison program consisting of representatives of the facility, the ANC, and the neighborhood. The applicant shall conduct meetings of the community liaison members at least four times a year. Notice of the meeting shall be given to the ANC and the owners of all property within 200 feet of the site. The Applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities.

VOTE: 3-0 (Jerry Gilreath, Sheila Cross-Reid and John G. Parsons to grant; Betty King not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:/ s /Sheri M. Pruitt-Williams
SHERI M. PRUITT WILLIAMS

Final date of Order: May 24, 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 of D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THE ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.3, " NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ORD 16421/POH

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16421 of Howard University/Metropolitan Day School, Inc., pursuant to 11 DCMR 3108 for special exceptions under Sections 205 and 206 to renovate an existing structure and to establish and operate a private school for 220 student and 24 staff, a child development center for 20 children and 2 staff, and a before and after-care school program located in an R-3 District at premises 1240 Randolph Street, N.E. (Square 3923, Lot 25).

HEARING DATES: January 20,1999; March 3 and 31, 1999
DECISION DATE: July 7, 1999

MOTION ORDER

Upon consideration of the ANC5A Motion for a "rehearing" of Application No. 16421 and the response to that Motion filed by the Applicant, the Board takes the following action:

The Board denies the ANC Motion to the extent that it requests a rehearing. Section 3332.6 of the Board's Supplemental Rules provides that:"[n]o request for a rehearing shall be considered by the Board unless new evidence is submitted which could not reasonably have been presented at the original hearing..." The Motion neither submits new evidence nor indicates that any new evidence exists. Therefore, the ANC has not satisfied the threshold showing for a rehearing.

The Board grants the ANC Motion only to the extent that it requests a reconsideration of Condition number 1 of its April 21, 1999 final Order. Upon reconsideration, the Board makes the following changes to the final Order:

The last full paragraph on page 11 of the Order beginning with : "The Board is of the opinion that the Metropolitan Day School

should be phased onto the site" is deleted and the following language is substituted in its place:

"Based upon the record before it, the Board is authorizing an enrollment of 150 students. The Board's decision not to authorize the higher enrollment requested is not intended to preclude the applicant from requesting authority to increase enrollment in the future through a new special exception application. Rather, the Board believes that the school's operations at the authorized level need to be evaluated over a period of time in order to determine the impact of a larger student body. Although the applicant is not precluded from making such an application at any time it considers reasonable, the Board believes that at least two years of evaluation are necessary before a request to increase the enrollment can be properly analyzed."

The second sentence in Condition number 1,.on page 12 of the Order, is hereby deleted.

The Board has reviewed its April 21, 1999 Order approving Application No. 16421 and concludes that the Order addressed, with precision, every ANC concern. Moreover, each of the conditions set forth in the order was formulated in response to the issues and concerns expressed by the ANC. The Board therefore continues to believe that it has afforded ANC 5A "Great Weight", as required by Section 13(d) of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-12; D.C. Code 1-261(d) and Section 3307.2 of the Zoning Regulations. The other grounds raised by the ANC in its Motion for Reconsideration/Rehearing are without merit. Therefore, the Board denies all other relief requested in the Motion other than that specifically granted herein.

VOTE: 3-0 (Sheila Cross Reid, John Parsons, and Jerry Gilreath to grant to the extent described above and to deny in other respects; Betty King not voting, having not heard the case).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

EACH CONCURRING MEMBER OF THE BOARD HAS APPROVED THE ISSUANCE OF THIS ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE THE ORDER ON THEIR BEHALF.

ATTESTED BY:/s/ Jerrily R. Kress, FAIA
JERRILY R. KRESS, FAIA
Director

Final date of Order: Sept. 10, 1999

UNDER 11 DCMR 3101.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OR PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

Supreme Court, U.S.
FILED
MAR 30 2000
CLERK

(2)

No. 99-1402

IN THE
Supreme Court of the United States

ANITA C. ROBINSON,
EDITH M. BRADFORD,
LINDA MINES,
CAROLYN A. DINGWALL,
DELPHINE M. JONES,
Petitioners,

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
METROPOLITAN DAY SCHOOL INC.,
Respondents.

On Petition for Writ of Certiorari
to the District of Columbia Court of Appeals

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

ANITA C. ROBINSON
EDITH M. BRADFORD
LINDA MINES
*** CAROLYN A. DINGWALL**
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13pp

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CONSTITUTION OF THE UNITED STATES

Fourteenth Amendment *8*

SUPPLEMENTAL BRIEF OF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petitioners submit this supplemental brief of intervening matter pertaining to question three (3) of the Petition for Writ of Certiorari for the Ward 5A-06 Commissioner who was unable to file *amicus curiae.*

STATUTORY BACKGROUND

The relevant statutes, provisions and cases that bar Advisory Neighborhood Commissioners standing to seek judicial review of agency decisions are set forth in pages 13-16, of the petition for a writ of certiorari. Section 1-1510 of the District of Columbia Code, Administrative Procedure Act, contains a specific prohibition against Advisory Neighborhood Commissions from seeking court review of agency actions. This prohibition was encoded in the ANC Act of 1975 which provided in relevant part that the :

> "Commission shall not have the power to initiate a legal action in the Courts of the District of Columbia or in the Federal Courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen...." *Actof1975,* D.C. Law 1-58, March 26, 1971, D.C. Code 1981 Supplement, section 1-261(g).

The issue of standing to seek judicial review of agency decisions by Advisory Neighborhood Commissioners was raised in *Kopff v. D.C. ABC Board.* The court in *Kopff* (Opinion of J. Ferren) held that Advisory Neighborhood Commissioners in their official roles have no capacity to seek judicial review of agency decisions; however, the Commissioners and other area residents have standing to assert claims as individuals . D.C. App. 381 A.2d 1372 (1977). D.C. Code, 1981, section 1-1510, states in relevant part:

> "Area residents who (*were*) commission members, however, have standing to initiate such review and to assert rights of commission itself. *Id*

The petitioners in the following paragraphs will illustrate the ambiguity of this law to the extent that it serves to bar individual commissioners whose land may be directly affected by land use decisions as well as to preclude the protection of the statutory advisory right of Advisory Neighborhood Commissioners in their capacity to advise.

STATEMENT OF THE CASE

The procedural history of this case is outlined explicitly on pages 1-2 of the Petition for a Writ of Certiorari, the petitioners outline the following details:

The Ward 5A-06 single-member-district (SMD) Advisory Neighborhood Commissioner, Mary Baird-Currie filed a Motion for Rehearing/Reconsideration .

On September 10, 1999, on behalf of the community residents and the Advisory Neighborhood Commission before the Board of Zoning Adjustment (BZA). This motion was subsequently denied, and a copy of the Motion's Order is outlined on pp. 26a-28a of the Petition for a Writ of Certiorari.

The SMD Advisory Neighborhood Commissioner resides within the zone of interest of the site, Metropolitan Day School, and would normally based upon relevant D.C. law (1-1510) meet the requirement of falling within the zone of interests to be protected or regulated by this statute.

On August 9, 1999, the SMD Advisory Neighborhood Commissioner joined a petition for a review with the other named petitioners before the District of Columbia Court of Appeals, alleging a violation of her individual due process rights and a denial of her right to present neighborhood views before the BZA.

Following a "show cause Order" by the D.C. Court of Appeals on September 8, 1999, that the "Commissioner/ Petitioners" show cause as to why they should be granted standing, and why the court had jurisdiction, the court dismissed the petition for review as the petitioners lacked standing.

I. VIOLATION BY EXISTING STATUTES OF THE RIGHTS OF INDIVIDUAL ADVISORY NEIGHBORHOOD COMMISSIONERS TO SEEK JUDICIAL REVIEW OF AGENCY DECISIONS AS ORDINARY CITIZENS.

The language of *Kopff v. D.C. ABC Board* as encoded in D.C. Code Section 1-1510 lends toward the interpretation that it is the area residents who reside within an advisory neighborhood boundary that have standing to seek judicial review and represent the views of the ANC itself. Although the case includes a reference to commissioners as individuals being able to seek judicial review of agency decisions, it is unclear as to whether this reference is to a current commissioner or a former one ("area residents who were commission members, however have standing"). The individual commissioner therefore appears to risk at least the possibility of preclusion from initiating legal actions, where their own rights as an ordinary citizen is challenged, and is therefore dependent upon area residents to represent his/her views and the ANC instrumentality. This is especially true in agency actions that may affect such commissioner's property interests.

In *Wheeler v. D.C. BZA,* the D.C. Court of Appeals held pursuant to *Kopff* that the ANC Commissioners in their official capacities, lacked standing to seek judicial review; however, the Court held that nine of ANC commissioners in their individual capacities could petition the Court of Appeals for review. D.C. App. 395 A. 2d 85 (1978). By contrast, the court held in *Don't' Tear it Down, Inc. v. D.C. Dept of Housing,* that the chairman of Advisory Neighborhood Commission 3A as an individual could not be granted standing in place of the 3A ANC to seek judicial review. The court held also in *Don't Tear It Down,* that the ANC 3A Commissioner need not be substituted as a petitioner because two original parties in opposition were petitioners on appeal, the 3A Commissioner did not wish to file an additional brief and the Commissioner did not assert that the existing petitioners could not represent the interests of the ANC. D.C. App., 428 A. 2d 369 (1981). The language adopted in D.C. Code 1-261, 1981, of the Home Rule Act and in Section 1-1510 of the D.C. Code regarding standing to seek judicial review states in relevant part:

"An Advisory Neighborhood Commission (*has*) no capacity to seek court review of an action of the District of Columbia Alcoholic Beverage Control Board in issuing a liquor license; area residents who (*were*) Commission members, however, have standing to initiate such review and to assert rights of the Commission itself..."

The petitioners maintain that the reference to commissioners in the past tense in the D.C. Code coupled with the language of *Kopff v. D.C. ABC Board*, allows for interpretations of standing requirements by the Court that preclude individual ANC Commissioners standing to seek judicial review in the courts. Such was the issue here that forced the petitioners to file a Petition for Writ of Certiorari in this Court. Standing should have been granted to the single-member-district Commissioner for three-fold reasons (1) she resided within "the arguable zone of interest; (2) her statutory right to present the neighborhood views before the BZA was disallowed by the agency, and (3) only she could adequately present the views of the Advisory Neighborhood Commission before the appellate body.

II. VIOLATION BY EXISTING STATUTES OF THE STATUTORY ADVISORY RIGHTS OF ADVISORY NEIGHBORHOOD COMMISSIONERS.

The previous relevant discussions within this brief and the Petition for Writ of Certiorari are incorporated herein.

The District of Columbia Court of Appeals held in Kopff v. DC ABC Board that the role of the Advisory Neighborhood Commissions is "advisory" in nature. The Court concluded that

the right of Advisory Neighborhood Commissions to advise should be protected and formulated the basis that the advisory right of the ANC is protected through the ability of area residents to seek judicial review of agency decisions. It is surmised that Advisory Neighborhood Commissioners in their advisory roles cannot seek judicial review of agency decisions, if the agency hinders the commissioner's statutory right to represent neighborhood residents' views.

The petitioners hold that the view held by the Court in *Kopff v. ABC Board* does not protect the statutory rights, duties and powers invested personally to the elected Advisory Neighborhood Commissioner for the benefit of the neighborhood residents they represent. It is the job of each single-member-district Commissioner to present the residents' views within such Commissioner's district to government agencies. Hence, the SMD Commissioner in the official role as community representative should be entitled to seek judicial protection in the appellate court if the agency interferes with that representative's actual elected advisory right. Petitioners state that the specific violation of ANC Commissioners' duties may not be properly presented before an appellate court by area residents, neither should it be their responsibility. Petitioners also state that the appellate court in its discretion and given the phrasing of D.C. Code statute 1-1510 could actually preclude Commissioners as individuals from adequately protecting the statutory rights of their elected office.

It is the *advisory neighborhood commissioner* through which the ANC instrumentality assures presentation of neighborhood views. Hence, not only are area residents injured when an ANC's statutory rights are abridged by an agency to the extent that it cannot adequately present neighborhood views, injury results to the advisory neighborhood Commissioner, within whose single-

member district, the "zone of interests" sought to be protected lies. Thus, *advisory neighborhood commissioners* in their advisory role are "persons aggrieved" by agency actions which violated ANC rights because they have also suffered "injury in fact" and this injury is within the zone of interests sought to be protected by the ANC Act and other relevant statutes to the particular case. 5 U.S.C. 702; D.C. Code § 1-1510; *Kopff v. ABC Bd.*381, A 2d. 381, A 2d 1372 (1977) App. D.C.; *Data Processing Service v. Camp*, 397 U.S. 150, 90 S. Ct. 827, 25 L.E. 2d 184 (1970), *Barber v. Collins*, 397 U.S. 159, 90 S. Ct. 832, 25 L. Ed. 2d 192 (1970).

Judicial review of administrative decisions is favored; thus, any legislative intention to abridge such review must be shown by clear and convincing evidence. *Rusk v. Cort,* 369 U.S. 367, 82 S. Ct. 787 7 L. Ed. 2d , 809 (1962); 1507, 18 L. Ed. 2d 681 (1967) *Abbott Laboratories v. Gardner,* U.S. 136, 141, 87, S. Ct.,(1987). The DCAPA affords such review to:

> "[a]ny person suffering a legal wrong, or adversely affected or aggrieved, by an Order or decision of the Mayor or agency." D. C. Code Supp. 1999, Stat. 1-1510. § 1-1502 (b)(9) of the D.C. Code states in relevant part:

The "persons" entitled to review include "public or private organizations of any character. D.C. Code § 1-261 and DCAPA 1-1510 places an express prohibition upon Advisory Neighborhood Commissions to initiate judicial review of agency decisions; however, that prohibition should not preclude standing to an individual advisory neighborhood commissioner where ANC rights and individual rights are violated by agency decisions. The inability of the commissioner in the official role as advisor to have standing to seek judicial review if that right is violated by the agency is unconstitutional because it violates the substantive due

process rights of the commissioner to protect the duties of his/her office.

The DCAPA and the Federal statute upon which it is based (5 U.S.C Statute 702) and based upon the Court's interpretation of the statutes provide no adequate means for protection of rights of officers of one of the most fundamental governmental instruments through which the governmental bureaucracy may come to grips with issues that are relevant to the citizens of the District of Columbia. D.C. Code § 1-261 states in relevant part:

> "Area Neighborhood Commissions are political subdivisions of the District of Columbia government and therefore do not receive due process protections under the Constitution against the actions of the District of Columbia. *Tenley &. Cleveland Park Emergency Commission v. District of Columbia Board of Zoning Adjustment*, App. D.C., 550 A. 2d 331 (1988), cert. Denied, 489 U.S. 108, 19 S. Ct. 1539. 103 L. Ed. 2d. 843 (1989).

The interpretation by the Court in *Kopff v. D. C. ABC Board* along with the language expressed in D. C. Code Statute 1-1510, that Advisory Neighborhood Commissioners in their official role lack standing to initiate judicial review of agency decisions to guarantee protection of their advisory role amounts to the reduction of these elected officials to "sophisticated serfdom".

Congress and the District of Columbia government have effectively formulated a means through which citizen's concerns may be ignored in favor of other interests. Congress in this wise is not effectively enforcing the equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

The District of Columbia Council within the last thirty (30) days has introduced legislation regarding the "great weight" provisions allotted to ANC views before government agencies. The Ward 5A-06 Commissioner views this legislation as language that essentially waters down the existing "great weight" provisions encoded in the D.C. Code. The petitioners urge the Court to clarify the ambiguity of language in the D.C. code and instruct revision to the Code regarding the issue of standing to seek judicial review of agency decisions by advisory neighborhood commissioners.

Respectfully submitted,

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